Jurisdictional Statement

81-6097

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES
October Term, 1981

JAMES E. RICHARDS, a resident of the County of Los Angeles, on behalf of himself and all other residents similarly situated,
Plaintiff and
Appellant,
VS
CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, STATE OF CALIFORNIA,
Defendants and
Appellees.

Superior Ct No C324296
2nd Civil Nos 62486
62487

ON APPEAL FROM THE CALIFORNIA SUPREME COURT

JURISDICTIONAL STATEMENT

JAMES E. RICHARDS
APPELLANT, IN PRO SE
912 Pacific Avenue #5
Venice, CA 90291

TABLE OF CONTENTS

JURISDICTION	1
QUESTIONS PRESENTED	1
CONSTITUTIONAL PROVISIONS AND RULES	1
STATEMENT OF THE CASE	3
ARGUMENT	3
THE CONSEQUENCES ARE SERIOUS	7

INDEX

UNITED STATES CONSTITUTION

Fifth Amendment	1, 4, 5
Seventh "	1, 4
Fourteenth "	1, 2, 4

FEDERAL STATUTES

28 U.S.C. Section 1257(2)	1
42 U.S.C.S. Section 7604(e)	1, 2, 5

FEDERAL CASES

Middlesex County Sewerage Authority v. National Sea Clammers 81 Los Angeles Daily Journal D.A.R. 2131 (U.S. Supreme Court June 25, 1981)	5
Willis v. Reddin (1969) 418 F. 2d 702	7

CALIFORNIA STATUTES

Code of Civil Procedure Section 473	7
" " " " " 526(a)	6
Government Code Section 814	2, 5
" " " 818.2	1, 2, 7
" " " 820.2	1, 2
" " " 835	2, 4, 5
Health and Safety Code Section 40414	4
" " " " " 40701	6

CALIFORNIA CASES

Diamond v. General Motors (1971) 20 Cal. App. 3d 374, 97 Cal. Rptr. 639	6
Grancone v. County of Los Angeles (1965) 231 C. A. 2d 629, 42 Cal. Rptr. 34	6

Greater Westchester Homeowners Association v. City of Los Angeles (affirmed by U.S. Supreme Court) (1979) 603 P. 2d 1329, 26 Cal. 3d 86 6

Howe v. MacKenzie (1954) 266 P. 2d 60, 122 C.A. 2d 852) 7

Kornoff v. Kingsburg Cotton Oil Co. (1955) 45 Cal. 2d 265, 288 P. 2d 507 7

Peebler v. Olds (1945) 26 C. 2d 656, 160 P. 2d 545 7

Quelvog v. City of Long Beach (1970) 6 Cal. App. 3d 584, 86 Cal. Rptr. 127 7

Roberts v. Permanente (1961) 188 Cal. App. 2d 526 7

JURISDICTION

The order of the Supreme Court of California, denying Appellant's petition for hearing, was entered on October 14, 1981. See attached.

A supplementary notice of appeal to this Court was duly filed in the California Supreme Court and the California Court of Appeals, Second Appellate District, on January 8, 1982. See attached.

This appeal is being docketed in this Court within 90 days from the denial of hearing below, the final judgment. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(2).

QUESTION PRESENTED

Whether applying California Government Code Sections 818.2 and 820.2 to this case violate the due process clause of the 14th Amendment of the Constitution of the United States, just compensation clause of the 5th Amendment, and the rights provided by Section 7604(e) of 42 USC when the effect is to deny plaintiff the right to seek any relief from air pollution damages against the Defendants, particularly when other state statutes permit such relief and Defendants admit facts otherwise sufficient to state a cause of action.

Whether the sections of the California Government Code specified above applied to this case violate the right to trial guaranteed by the 7th Amendment of the United States Constitution.

CONSTITUTIONAL PROVISIONS AND RULES

Fifth Amendment, United States Constitution

...nor shall private property be taken for public use, without just compensation.

Seventh Amendment, United States Constitution

In suits at common law, where the value in controversy shall

exceed 20 dollars, the right of trial by jury shall be preserved....

Fourteenth Amendment, United States Constitution

...nor shall any State deprive any person of life, liberty, or property, without due process of law.

42 USCS Section 7604(e)

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any emission standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

California Government Code Section 814

Nothing in this part affects ... the right to obtain relief other than money or damages against a public entity.

California Government Code Section 818.2

A public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law.

California Government Code Section 820.2

Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused.

California Government Code Section 835

Conditions of liability. Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:

(a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or

(b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

STATEMENT OF THE CASE

The imperiality of this Court has already been proven to this Appellant/Plaintiff when it tacitly upheld a ruling of unintelligibility of a complaint 10 high school graduates unanimously averred to be understandable and which was written by a graduate from the nation's top graduate school who has been invited to submit stories to Esquire Magazine, and as if the Court was too busy to save the lives of 15,000 Americans yearly. In this second go-round, having witnessed the courts again welcoming obvious (albeit new) deceptions, coldly mis-applying state statutes to abruptly deny Plaintiff's Constitutional rights, contradicting their own written policies and decisions, the Plaintiff is reasonably assured that this Court only will epitomise the lack of guts and integrity characterising the court system over which it presides. Therefore, a refusal by the Court to hear this appeal will be taken as assent to the righteousness of the Appellant's positions and as consent to his never paying taxes again.

Argument

According to the National Academy of Engineering, air pollution kills 15,000 Americans yearly, a toll greater than that causedby toxic solid wastes, nuclear power, toxic shock, drunken holiday driving, and handgun abuse combined, all of which generate much verbal and legal opposition. Due to air pollution, the life span of every American, including Plaintiff, is shortened on the average by three years. Lesser but still substantial, damages to humans, agriculture, and personal and real property also regularly occur. As a random example, one half of all citrus crop losses are due to air pollution. Moreover, carbon dioxide, an administratively ignored pollutant, will relegate the world within 8 years to traumatic weather changes at the end of this century. Defen-

dants admit as true all of the above facts by demurring.

Nevertheless, air pollution has become viewed as a natural phenomenon, a necessary evil, lacking urgency, subservient to selected business interests, progress whose delay is imminently excusable. Air pollution largely originates on Defendants' properties: streets and highways they have devoted to automotive use. The Defendants remain, at all times, nonetheless, statutorily and rightfully responsible for the consequences of their land use (California Health and Safety Code Section 40414, Government Code Section 835). Forbidden to the States, under the 5th, 7th, and 14th Amendments of the U.S Constitution, is the deprivation to a person of life and property without due process and without advance compensation in cash. The disposal of toxic airborne wastes from Defendants' onto Plaintiffs' properties is a substantial taking of private property for a public use. The Defendants admit, also, the above facts as true.

The Defendants maintain, however, that the Federal Clean Air Act and the California Air Resources Act are preempting factors, and therefore the California Tort Immunity Law applies (Government Code Sections 815 through 820), which does not permit a public entity to be sued for carrying out or failing to carry out a legal duty. The defense also successfully argued that even if one of several governmental defendants were liable, the courts were Constitutionally powerless to determine which one.

Presenting the federal question, the Plaintiff from the first complaint to the California Supreme Court argued that insofar as any act, the Air Resources Act, or Tort Immunity Act, or any law deprived Plaintiff of life or property without cause, it was unConstitutional, based on 14th and 5th Amendment guarantees.

In addition, perhaps it may be appropriate to point out that in

no way can the air pollution acts in question be construed in good faith to permit damages or to preclude a citizen from seeking relief against a State agency. As to the latter assertion, 42 USCS 7604(e) explicitly states otherwise, as this Court in Middlesex County Sewerage Authority v. National Sea Clammers (81 Los Angeles Daily Journal D.A.R. 2131 (U.S. Sup. CT., June 25, 1981)) pointed out in a water pollution case regarding the "savings clauses" in the controlling laws. Furthermore the Tort Immunity Act is not so extensive as the courts have held; in fact, the courts deliberately have ignored two statutes which provided explicit exemptions to immunity and under which this suit was brought. Those exemptions are Government Code Section 814, which says that immunity only applies to dollar liability (the suit herein first seeks injunctive relief) and Section 835 which says that immunity does not apply to claims for dollar damages arising from any condition of public property which causes a foreseeable injury. The California Air Resources Act itself says that it does not preempt existing land use authority by local agencies.

In effect then the courts have applied the Tort Immunity Act to this suit despite arguments such an application violates federal rights and would therefore be unConstitutional, and despite clear state laws making immunity inapplicable to this suit.

If a law did deny due process guaranteed by the 14th Amendment and just compensation guaranteed by the 5th, it must be repugnant to the U.S. Constitution.

However, most judges are not blind to the fact that they drive automobiles, may own stock in auto and oil companies, and are paid by the Defendants; that set of circumstances must explain their decisions: their interpretation that the courts cannot distinguish between two government defendants can not have been colored by reason.

In addition to repressing federal rights, a list of state laws and prior decisions have been violated. First of all, Diamond v. General Motors ((1971) 20 Cal. App. 3d 374, 97 Cal. Rptr. 639) unequivocally and repeatedly states that an individual suit is permitted in exactly these circumstances. Secondly, the California Supreme Court stated, and was upheld by this Court, that pollution damages to the properties of a class of people from noise from aircraft meeting official government noise emission limitations and lawfully using government property are a compensable form of damages. (Greater Westchester Homeowners Association v. City of Los Angeles (1979) 603 P. 2d 1329, 26 Cal. 3d 86.) That suit commenced as an inverse condemnation. Furthermore, it is common knowledge that even the Tort Immunity Act when validly applied, does not provide blanket, absolute protection. Awards against police and highway maintenance departments, for example, are common. See California Health and Safety Code Section 40701, Granone v. County of Los Angeles (1965) 231 C. A. 2d 629; 42 Cal. Rptr. 34. As already mentioned, the suit herein was moreover brought under specific provisions of immunity exemptions. Additionally, the first judge in the case recommended a taxpayer's suit (authorizing injunction, California Code of Civil Procedure Section 526(a)). However, subsequent hearings in another courtroom studiously ignored that added cause of action. Also, a demonstrable error by the Clerk of the Appellate Court caused Plaintiff to file only one brief when two were due (in two separate appeals). By some perverted reasoning, the Appellate Court thereupon dismissed BOTH appeals -- even the one which was timely briefed -- and in spite of the fact that the Clerk had granted the semi-automatic extension of time to file the second brief, which had not run. Thus, Plaintiff paid two separate filing fees but was kicked out of court before his position could be stated!

That was in the face of written court policy to hear cases on the merits (California Code of Civil Procedure 473), to view with disfavor attempts to take advantage of procedural error (Howe v. MacKenzie (1954) 266 P.2d 60, 122 C A 2d 852), especially when they are excuseable (Peebler v. Olds (1945) 26 C 2d 656, 160 P. 2d 545). Regarding dangerous conditions California courts have specifically held that even if a public entity is immune under Government Code Section 818.2, if a dangerous condition of its property causes injury it is liable under Section 835, which is the determining statute (Quelvog v. City of Long Beach (1970) 6 Cal. App. 3d 584, 86 Cal. Rptr. 127). Finally, insofar as other causes of action are involved, fumes and vapors consistently have been held to be actionable trespass (Kornoff v. Kingsburg Cotton Oil Co. (1955) 45 Cal. 2d 265, 288 P. 2d 507; Roberts v. Permanente Corp. (1961) 188 Cal. App. 2d 526, for example; a negligence cause was also substantiated.

If there were a legitimate defense available, one wonders why the agencies had to rely exclusively on obvious misapplication of immunity. Why couldn't the courts directly answer the Plaintiff's arguments?

It has already been held that the California Tort Immunity Act (also mentioned as the California Torts Claims Act) does not apply if the effect is to qualify a federally generated right (Willis v. Reddin (1969) 418 F. 2d 702.)

THE CONSEQUENCES ARE SERIOUS

The results of applying unConstitutional provisions of immunity to this suit in the face of objections based on federally guaranteed rights are serious.

If the law forbids — or courts forbid — seeking any relief from air pollution damages against a State agency, a dangerous precedent has set for shielding any and all wrongful and negligent government acts and omissions. Society needs detached judges, not ones who so identify with

the establishment they can't recognize a dissenting view, much less weigh it.

In an opinion that insults intelligence, for the first time the courts have given permission to unaccountable government agencies (and in effect to private citizens) to kill others from economic interest. (Perhaps anti-abortionists would disagree.) This is the characteristic of the criminal mind; it is a bold step in the direction Big Government and Big Business are taking us to neo-feudalism, replete with landless masses. By being totally irresponsive to attempts to redress grievances, government emasculates one segment of the population and drives another underground. Is serfdom the government's intent?

Such a circumstance is incommensurably unfortunate because many practical alternatives to polluted air exist. If judges were truly committed to the maxim "for every wrong there is a remedy," they would suddenly be open to a host of options that create employment, conserve resources, and benefit housing, agriculture, even education. Polls indicate the will of the people is tolerant of paying for environmental health, yet government (which is actually elected by a minority of eligible voters and subservient to special interests) seems to be obstructive.

Progress will occur when the need to do so is felt. In the matter of justice regarding air pollution damages, it is the conscience of the people which needs to be appealed to. That is the functioning of this Court.

The courts have listened with deaf ears to such basic arguments. Regretably, the Plaintiff's experience with the courts since the filing of this series of suits in 1974 has been a witness of outright lies, hypocrisy, deliberate misrepresentations and deliberate mis-citations. Having experienced a great number of selfish interests held superior to

my Constitutional rights, it is unfortunately impossible to hope this Court will reverse the tide. Therefore, the only reasonable conclusion is that the Court, in refusing to hear this appeal, acknowledges the legitimacy of the Plaintiff's position, and consequently assents to Plaintiff's never paying taxes again, in lieu of award of damages, and expects to forego Plaintiff's allegiance to any law or order solely from motives of loyalty.

January 10, 1982

James E. Richards
Appellant, In Pro Se
912 Pacific Avenue #5
Venice, Ca 90291
(213) 396-5701

Appendix

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SUPREME COURT, U.S.

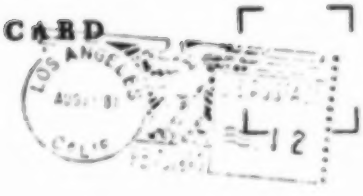
Los Angeles, Cal. JUL 24 1981, 19

TITLE { JAMES E. RICHARBS / CITY OF LOS ANGELES } No. 62486 62487

MOTION TO DISMISS GRANTED ON GROUNDS ASSERTED.

CLAY ROBBINS, Clerk

POST CARD



CLERK'S OFFICE
Court of Appeal
SECOND DISTRICT
3580 WILSHIRE BOULEVARD
SUITE 301
LOS ANGELES, CA 90010

James E. Richards
912 Pacific ave. #3
Venice, Ca. 90291 California

Los Angeles, Cal. AUG 11 1981, 19

TITLE { Richards / City of Los Angeles } No. 62486 + 62487

PETITION FOR REHEARING DENIED.

CLAY ROBBINS, Clerk

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

I have this day filed Order

In re: 2 Civ. No. 62487

Richards

vs.

City of Los Angeles

Respectfully,

Clerk

Los Angeles, Cal OCT 30 1981 *, 19*

TITLE { JAMES E. RICHARDS. } 62486 #
{ CITY OF LOS ANGELES } *No.* 62487

REMITTITUR ISSUED

CLAY ROBBINS, *Clerk*

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JAN 25 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

JAMES E. RICHARDS, a resident of the County of Los Angeles, on behalf of himself and all other residents similarly situated,
sim Plaintiff and
APPELLANT,

VS.
CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, STATE OF CALIFORNIA,
Defendants and
APPELLEES.

Sup Ct. C324296

Cal. Appeals No. 62486
62487
2nd Civil

Received Jan. 11, 1982
Court of Appeal, State of California, Second Appellate District
by Cleary Robbins Clerk

NOTICE OF APPEAL

TO ALL THE PARTIES:

You are hereby notified that the Plaintiff, James E. Richards, appeals the judgment in this case denying the petition for hearing by the Supreme Court of California October 14, 1981 after the Appellate Court denied Plaintiff's timely filed petition for rehearing August 10, 1981. Copy of final order attached herewith.

This appeal is brought under the authority of 28 USC 1257(2) where the application of California Government Code Section 818.2 and 820.2 have had the effect of denying the Plaintiff the rights to due process guarantted by the 14th Amendment to the U.S. Constitution and his rights under the 5th and 7th Amendments and the rights existing under 42 USCS Section 7604(e).

This notice has been filed in the California Supreme Court and Court of Appeals and copies have been sent to all the parties required to be served, which are listed by name and address in the accompanying Proof of Service.

James E. Richards
Appellant, In Pro Se
912 Pacific Avenue #5
Venice, CA 90291
396-5701

PROOF OF SERVICE:

I, Cynthia Lin Tsou, A citizen of the United States, affirm under penalty of perjury that I served the within-named parties an accurate

copy of the enclosed APPLICATION FOR EXTENSION OF TIME;
NOTICE OF FILING OF APPEAL

by placing same in a postage-paid envelope in the U.S. Mail, addressed as follows:

CALIFORNIA APPELLATE COURT
3580 Wilshire Blvd.
Los Angeles, CA

CALIFORNIA SUPREME COURT
3580 Wilshire Blvd.
Los Angeles, CA

CITY OF LOS ANGELES
CITY ATTORNEY
200 N. Main St.
Los Angeles, CA

COUNTY OF LOS ANGELES
COUNTY COUNSEL
500 W. Temple
Los Angeles, CA

SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT
9150 Flair Drive
El Monte, CA

STATE OF CALIFORNIA
ATTORNEY GENERAL
3580 Wilshire Blvd.
Los Angeles, CA

My address for business is 912 Pacific Avenue #5 Venice, CA; I am over 18 years of age.

Date 11/8/

Cynthia Lin Tsou

81-6097

RECEIVED
JAN 22 1982

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

JAMES E. RICHARDS, a resident of the County of Los Angeles, on behalf of himself and all other residents similarly situated,
Plaintiff and
APPELLANT,
V.
CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, STATE OF CALIFORNIA,
Defendant and
APPELLEE.

Superior Court No. C324296
2nd Civil Nos. 62486
62487

MOTION FOR LEAVE TO PROCEED

IN FORMA PAUPERIS

The appellee, James E. Richards, asks leave to file the attached Appeal without prepayment of costs and to proceed in forma pauperis pursuant to Rule 53

The appellee's affidavit in support of this motion is attached hereto.

January 11, 1982

James E. Richards
912 Pacific Avenue #5
Venice, CA 90291
(213) 396-5701

RECEIVED
JAN 12 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

JAMES E. RICHARDS, a resident of the County of Los Angeles, on behalf of himself and all other such residents similarly situated,
Plaintiff and
APPELLANT,
V.
CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, STATE OF CALIFORNIA,
Defendants and
APPELLEES,

Superior Court No. C324296
2nd Civil Nos. 62486
62487

AFFIDAVIT

I, James E. Richards, being first duly sworn according to law, depose and say, in support of my motion for leave to proceed without being required to prepay costs or fees: 1. I am the appellee in the above-entitled case. 2. Because of my poverty I am unable to pay the costs of said cause. 3. I am unable to give security for the same. 4. I believe that I am entitled to the redress I seek in said case. The nature of said cause is briefly stated as follows:

The State of California has invoked the Torts Claims Act to deny me any form of redress in regards to the air pollution damage I have suffered and in violation of my Constitutional rights.

James E. Richards

Duly witnessed and sworn to before me, a Notary Public, this 11th day of January, 1982

Samuel O. Lefoff
Notary Public

SAMUEL O. LEFOFF
NOTARY PUBLIC — CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires July 25, 1982

6331 LINCOLN AVENUE, CALIFORNIA 90291